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UNITED STATES OF AMERICA

11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,

No. CR 23-47-JLS-1

14 Plaintiff,

GOVERNMENT'S REPLY IN SUPPORT OF
MOTION TO EXCLUDE EXPERT TESTIMONY
OF KATE CORRIGAN

15 v.

16 THOMAS VINCENT GIRARDI,

Hearing Date: July 21, 2023
Hearing Time: 11:30 a.m.
Location: Courtroom of the
Honorable Josephine L. Staton

17 Defendant.

18
20 Plaintiff United States of America, by and through its counsel
21 of record, the United States Attorney for the Central District of
22 California and Assistant United States Attorneys Scott Paetty and Ali
23 Moghaddas, hereby files its reply in support of its motion to exclude
24 the expert testimony of Kate Corrigan (Dkt. 71).
25 //
26 //
27 //

This reply is based upon the attached memorandum of points and authorities, the files and records in this case, and such further evidence and argument as the Court may permit.

Dated: July 6, 2023

Respectfully submitted,

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/s/
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

3 Recognizing that Ms. Corrigan's observations are duplicative of
4 observations and opinions catalogued at length by medical experts,
5 defendant mischaracterizes the government's motion to exclude Ms.
6 Corrigan as an attempt to exclude the observations of defendant's
7 current counsel of record. Not so. The government does not dispute
8 that defendant's counsel of record should be afforded the
9 opportunity to share their observations and opinions with the Court
10 and medical experts. Indeed, current defense counsel have already
11 provided their medical expert, Dr. Wood, with a collateral
12 interview. Moreover, in filings associated with these competency
13 proceedings months ago, defense counsel provided the Court with
14 detailed observations of their interactions with defendant. (See
15 Dkt. 19 at 1, 3-5.) And counsel will further argue their
16 impressions during the upcoming competency hearing. Thus, even
17 without testimony from Ms. Corrigan, the Court will already be fully
18 advised by defense counsel and their experts on defendant's
19 purported inability to aid in his defense.

20 The fact remains that Ms. Corrigan's proffered testimony is
21 irrelevant, unreliable, and cumulative. As someone untrained in
22 recognizing the presence and symptoms of neurocognitive disorders,
23 she offers nothing more than a report of conversations with
24 defendant, which are already detailed by several medical experts
25 (and others) throughout hundreds of pages of expert reports. But
26 unlike those experts, Ms. Corrigan cannot provide the Court with any
27 meaningful guidance on whether defendant's symptoms are consistent
28 with his purported "moderate dementia" diagnosis, "major

1 neurocognitive disorder," or simply an exaggeration of his true
2 abilities. Those opinions, which are at the heart of this Court's
3 inquiry into defendant's competency, can only be opined upon by
4 medical professionals, retained by both sides in this case, who are
5 each trained in this subject. Ms. Corrigan's opinions on
6 defendant's purported inability to communicate with defense counsel
7 offer nothing more than advocacy masquerading as expert testimony.
8 Nor does defendant's string cite of cases alter that conclusion.
9 Nearly all the cases cited in defendant's opposition stand for what
10 the government does not dispute: observations from defendant's
11 counsel are relevant. And despite defendant's claim of "decades of
12 Supreme Court and Circuit Court case law," he only cites two
13 district court cases where a court permitted testimony from a
14 lawyer-expert, each of which is readily distinguishable.

15 Accordingly, for the reasons argued in the government's motion
16 and herein, the Court should exclude Ms. Corrigan's testimony.

17 **II. ARGUMENT**

18 **A. Ms. Corrigan's Testimony is Cumulative under Rule 403 and**
19 **Unreliable under Rule 702**

20 The government does not dispute that the observations of defense
21 counsel are relevant to a court's ultimate determination of a
22 defendant's competency to stand trial. However, it does not follow
23 that any defense attorney's observations of a defendant are similarly
24 relevant. In addressing the government's motion, defendant
25 incorrectly reframes the government's request to exclude Ms.
26 Corrigan's testimony as an attempt to exclude all defense counsel
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28

1 observations of defendant.¹ However, that is not what the motion
2 seeks. The Court has heard and will continue to hear argument from
3 defense counsel regarding their interactions with and observations of
4 defendant. Indeed, counsel previously briefed these issues in
5 seeking a competency evaluation (see Dkt. 19), and this week filed an
6 under seal brief discussing these issues at length, and will have the
7 opportunity to argue their interpretation of the various collateral
8 interviews and medical expert opinions again during the upcoming
9 competency hearing. Thus, Ms. Corrigan's perceived observations of
10 defendant during a few interactions with defense counsel add nothing
11 new to the issue, and are thus cumulative and a waste of time.

12 Defendant concedes as much in his opposition. (See Dkt. 74 at 2 n.2
13 ("Ms. Corrigan's observations are consistent with those of other
14 witnesses who have observed Mr. Girardi.".)

15 Moreover, Ms. Corrigan's testimony will not assist the Court in
16 its inquiry for the truth, but instead only serve to distort the
17 trained observations and opinions of both parties' medical experts.
18 As defendant admits, Ms. Corrigan has no background, training, or
19 experience in clinical interviews of patients, assessing symptoms of
20 neurocognitive disorders, or diagnosing mental impairments. The lack
21 of experience in the foregoing is especially germane here where
22 potential malingering and exaggeration of symptoms is an issue. (See
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24

25 ¹ Defendant similarly mischaracterizes an article written by Dr.
26 Goldstein in 2004. (See Dkt. 74 at 1 n.1.) That article proposes
27 that medical experts consult with independent attorneys on legal
28 issues rather than relying on the attorney who retained them, who
often have a stake in the outcome of the experts' findings. Here,
Ms. Corrigan is neither "independent," as contemplated by the
article, nor a legal advisor to any of defendant's retained medical
experts.

1 Dkt. 64 at 44² (summarizing performance validity test results) and
2 id. at 70 (describing conclusions based on these test results)..)
3 Unlike the medical experts in this case, Ms. Corrigan's inability to
4 observe, identify, and compare such exaggeration and inconsistent
5 symptoms with diagnoses from medical professionals makes her
6 untrained observations and ultimate opinion unreliable.

7 Defendant concedes that Ms. Corrigan is not qualified to opine
8 about matters such as neuropsychology or malingering, (Dkt. 74 at 5),
9 but attempts to salvage her testimony by arguing that she will only
10 opine that defendant is unable to properly assist in his defense.
11 But this ignores the fatal deficiencies in Ms. Corrigan's proffered
12 opinion. She cannot testify about defendant's purported inability to
13 assist in his defense without consideration of the claimed
14 neurocognitive issues he is supposedly suffering from, and
15 importantly, any inconsistent symptoms, such as malingering behavior,
16 that are unassociated with such neurocognitive disorders. Without
17 training in clinical evaluations of patients like defendant who
18 allegedly suffer from dementia or other related diseases, Ms.
19 Corrigan's proffered testimony is no different than argument by
20 defense counsel regarding their own observations. While the Court
21 can and should consider defense counsel's interactions with and
22 observations of defendant, it does not need additional testimony from
23 Ms. Corrigan where no less than four other medical experts will opine
24 on defendant's mental capacity to consult with his lawyers with a
25 reasonable degree of rational understanding and to otherwise assist
26 in his defense.

27 _____
28 ² Page numbers for this docket entry refer to the page listed on
the ECF header, not the report.

1 **B. Defendant's Cited Cases Do Not Support Ms. Corrigan's
2 Testimony**

3 Defendant's citation to cases which hold, among other things,
4 that courts should consider defense counsel's observations of their
5 client, does not change this outcome. (Opp. at 5-6.) As many of the
6 cases note, a defendant's counsel of record has unique access to
7 his/her client and such added experience puts him/her in a unique
8 position compared to the government or courts. (*Id.*) However, none
9 of these cases hold that because courts should consider the opinions
10 of a defendant's own attorney, they likewise must permit unretained
11 lawyers presented as "experts" to opine as to their separate
12 observations and opinions. Such an extension of longstanding
13 procedures governing competency proceedings is completely unnecessary
14 and not at all the norm. Indeed, despite claiming that "decades of
15 Supreme Court and Circuit Court case law" hold otherwise, defendant
16 only cites two out-of-district cases where the court permitted such
17 lawyer-experts. Both are readily distinguishable.

18 For example, in United States v. Duhon, the Court initially
19 appointed two medical experts who each opined at two separate mental
20 competency hearings that Duhon's "intellectual functioning [wa]s in
21 the mild range of mental retardation and that academically, he [wa]s
22 functioning at the age of a seven-year old." 104 F. Supp. 2d 663,
23 667 (W.D. La. 2000). Following the hearings, the court committed
24 Duhon to the custody of the Attorney General pursuant to § 4241(d)(1)
25 even though it noted that "hospitalization" presumably could not
26 reverse the mental disorder afflicting Duhon. *Id.* at 668.

27 Eight weeks later Duhon's competency had allegedly been
28 restored. *Id.* In preparation for a third mental competency hearing,

1 the court appointed two additional experts, one in forensic
2 psychology and one in criminal law, and noted that the previous
3 report "does not identify or provide a background of the person or
4 persons teaching Duhon about 'his current charges, the potential
5 seriousness of these charges, as well as a general understanding of
6 the adversarial nature of criminal law and an understanding of the
7 criminal process, procedural protections of his rights, and the roles
8 of courtroom personnel." Id. at 669. Moreover, at the third mental
9 competency hearing, the expert who authored the previous report
10 conceded that he did not address Duhon's ability to assist counsel in
11 preparing his defense, which the court stressed was an essential
12 component in assessing competence. Id. at 674.

13 The facts of Duhon are readily distinguishable from the facts of
14 this case. First, the Duhon court only appointed a criminal law
15 expert because the government's expert report that found competency
16 had been restored was completely silent as to Duhon's ability to
17 assist counsel. Indeed, he was the only expert who apparently opined
18 as to Duhon's mental capacity to consult with his lawyer with a
19 reasonable degree of rational understanding and to otherwise assist
20 in his defense. Additionally, unlike Ms. Corrigan's silent
21 observations of defendant, the criminal law expert in Duhon actually
22 interviewed Duhon and opined to the court about his ability to
23 interact with Duhon - not his observations of Duhon's interactions
24 with his own counsel. Thus, the legal expert's opinions in Duhon
25 were neither irrelevant nor cumulative as it provided the court with
26 relevant facts that were otherwise missing from the record. Here, as
27 noted above, the record is replete with evidence and argument from
28

1 counsel of record regarding third party observations of defendant and
2 counsel's inability to communicate with defendant.

3 Defendant's citation to United States v. Merriweather is
4 similarly inapposite. 921 F. Supp. 2d 1265 (N.D. Ala. 2013).
5 Merriweather involved a violent offender who was charged with armed
6 bank robbery and murder. Id. at 1267. During his incarceration,
7 Merriweather feigned psychosis and refused to speak with his
8 attorneys and medical experts, dismissing them "with hand signals."
9 Id. at 1298. Here, defendant has exhibited no such issues. In fact,
10 defendant has been cooperative and communicative throughout the
11 competency proceedings, and has engaged with counsel and all medical
12 experts who have evaluated him. In short, the facts of this case are
13 readily distinguishable from both Merriweather and Duhon.

14 Defendant also claims that Ms. Corrigan's proffered testimony as
15 an "independent criminal defense practitioner" will somehow protect
16 counsel from "potential ethical pitfalls," including possible
17 violation of ethical rules governing attorneys. (Dkt. 74 at 8.) No
18 such "pitfalls" exist. First, counsel need not become a witness at
19 any competency hearing because their representations to the Court
20 that they believe defendant cannot aid in his defense have already
21 been made in multiple filings. In any event, Rule 3.7 of the
22 California Rules of Professional Conduct applies to trial, not
23 competency hearings. Comment 1 states "[t]his rule applies to a
24 trial before a jury, judge, administrative law judge or arbitrator.
25 This rule does not apply to other adversarial proceedings." (Id.
26 (emphasis added).) Defense counsel claims that defendant may
27 question counsel's loyalty and impair the attorney-client
28 relationship moving forward if they opine on defendant's competency

1 in front of him, which may differ from defendant's perceived
2 abilities. (Dkt. 74 at 8.) This is nonsensical as defense counsel
3 will clearly argue during the upcoming competency hearing, in
4 defendant's presence, that they believe defendant is incompetent to
5 proceed to trial. Whether such information is presented through
6 testimony or argument makes no difference.

7 **III. CONCLUSION**

8 For the reasons set forth above and in the government's motion,
9 the government respectfully requests that this Court exclude the
10 proffered opinions and expert testimony of Kate Corrigan.

11 Dated: July 6, 2023

Respectfully submitted,

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13 MACK E. JENKINS
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16 /s/
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